appears that if section 65 does not apply, the plaintiff would be entitled to recover these sums under English law. See *Hermann* v. *Charlesworth*, (1905) 2 K.B. 123, particularly the judgment of Cozens Hardy, L.J., and *Srinivasa Ayyar* v. *Sesha Ayyar (supra)*.

But the Rs. 450 remitted to the defendant in India and by him paid over to Bara Singh is not, in my opinion, an advantage received by the defendant. The defendant, in my view, received this sum as agent of the plaintiff for the express and sole purpose of paying it to Bara Singh. Accordingly the plaintiff's claim for a refund of this sum fails. The plaintiff's claim for the $150 alleged to have been paid to the defendant on the 3rd or 5th February and for the value of the jewellery and cloth also fails, my findings of fact as to these items being adverse to the plaintiff.

As regards the counterclaim, the defendant's claim for the balance of his $250 commission is obviously bad for illegality and fails. So also is his claim for loss of wages which is merely a form of remuneration for the defendant's time expended in furthering the illegal object. There remains his claim for steamer and train fares and cost of maintenance. These are expenses actually incurred, and it must be remembered that the defendant has performed his agreement, viz., to proceed to India and arrange the marriage.

Section 65 appears to be the only section in the enactment dealing with void agreements which have been performed by one of the parties. But this section does not help the defendant as the plaintiff has not received any advantage under the contract from the defendant. The only other section which could possibly apply is section 57 which reads as follows:—"Where persons reciprocally promise, firstly, to do certain things which are legal, and secondly, under specified circumstances, to do certain things which are illegal, the first set of promises is a contract, but the second is a void agreement".

Can it be said that the plaintiff and defendant promised, first, to do certain things which are legal, viz., that the defendant should proceed to India and that the plaintiff should pay his expenses, and, secondly under specified circumstances, viz., on his arrival in India, that the defendant should do an illegal thing, viz., arrange the marriage? In my view the agreement proved in this suit cannot be split up in this manner. The agreement to go to India was, in my view, not an independent agreement, but a mere step in the performance of the illegal agreement.

It must, I think, be taken that the Contract Enactment deliberately omits to provide for the recovery of expenditure incurred under a void agreement except in the specific case mentioned in section 65. It follows that the defendant's counterclaim for his steamer and train expenses and maintenance fails. A similar conclusion has been reached in the English Courts. See *King* v. *Burr*, 3 Mer. 693 as explained in *Hermann* v.

The only other item in the counterclaim is the Rs. 50 remitted by the defendant to Bara Singh at the request of the plaintiff. The defendant said that Rs. 50 was sent "to keep them" (i.e. the bride's family) firm to their promise." It was, therefore, within the defendant's knowledge that Rs. 50 was to be used for an unlawful object. It follows that, though the consideration for the loan viz. the promise to repay, was not unlawful, yet the object of the agreement was unlawful, and the agreement is void. The English Courts have adopted the same reasoning. See *Pearce* v. *Brooks*, (1866) L.R. 1 Exch. 213. The defendant's counterclaim for the Rs. 50 accordingly fails.

The result is that the plaintiff gets judgment for $215 on his claim, and the defendant's counterclaim is dismissed. To mark my disapproval of the plaintiff's conduct in giving what I believe to be false evidence and in as much as the plaintiff's success in the suit—such as it is—is due to the proof of facts which he has falsely denied, I shall make no order as to the costs of either the claim or counterclaim. For the same reasons I shall not allow any interest on the $215 recovered by the plaintiff.

Judgment accordingly.

[ORIGINAL CIVIL JURISDICTION]

WILLIAMSON, J.

July 9, 1933.

CHONG GUAT YIN OF SINGAPORE..Plaintiff

vs.

K. A. R. S. T. ARUNASALAM CHETTYAR.....Defendant

[BATU PAHAT CIVIL SUIT No. 17 of 1933]

Johore Courts Enactment—Civil Procedure Code, Section 284—claim for declaration of title—Registrar's Order on Objector's Inquiry—priority of registration.

Under S. 284 of the Civil Procedure Code in force in Johore a party against whom an order under section 281, 282 or 283 is made may institute a suit to establish his right to a property in dispute, notwithstanding that an order was made in objection proceedings relating to the same property.

The provisions of the Land Enactments do not preclude the Court from going behind the registered title of land to enable the Court to enforce trusts or to ascertain what interest a judgment debtor has in lands attached.

ACTION tried before Williamson, J.

The facts sufficiently appear from the Judgment below.

Goho (*Osborne-Jones* with him) for the Plaintiff.

Knowles (*Pillai* with him) for the Defendant.

Cur. ad. Vult.

WILLIAMSON, J.—In this case the following facts numbered 1 to 11 are admitted or appear from the documents:—

(1) In the year 1930 the land comprised in E. M. R. No. 75 belonged to one Abdulrahman.
(2) In October 1930 this land had been charged by Abdulrahman in favour of Sockalingam Chetty to secure the sum of $2,250 and there were also three attachments registered against the land as set out in paragraph 7 of the plaint.
(3) On the 12th October 1930 Abdulrahman executed a Transfer of this land in favour of one Tan Bak Chay of Batu Pahat.
(4) On the 15th October 1930 the Charge for $2,250 in favour of the Chetty and the three attachments were discharged as pleaded in paragraph 7 of the amended plaint.
(5) On the same date (i.e. the 15th October 1930) the transfer executed by Abdulrahman in favour of Tan Bak Chay was presented to the Land Office Batu Pahat for registration.
(6) On the same day (15th October, 1930) a warrant of attachment in Civil Suit No. 76 of 1930 was also presented for registration and the transfer dated 12th October, 1930 in favour of Tan Bak Chay was registered subject to this attachment.
(7) Tan Bak Chay instituted proceedings as objector in Civil Suit No. 76 of 1930 for the purpose of setting aside the attachment and by his Order dated the 30th March, 1931 the Assistant Registrar at Batu Pahat held the attachment to be good and that it should remain on the land.
(8) From this Order an appeal was brought which was heard by Thorne, J. who by Order dated the 16th day of April, 1931 discharged the said Order of the Assistant Registrar and the registration thereof.
(9) On the 21st April, 1931 Tan Bak Chay sold his interest in the said land to the present plaintiff.
(10) On appeal to the Court of Appeal the Order of Thorne, J. was set aside by an Order dated the 9th August, 1931 and the order of the Assistant Registrar of the 30th March, 1931 restored.
(11) On the 4th day of October, 1931 Tan Bak Chay took proceedings in Civil Suit No. 92 of 1931 against the present defendants to set aside the said Order of the Assistant Registrar and by an Order of Burton, J. dated the 28th day of June, 1932 this action was dismissed.

And in these proceedings the present Plaintiff claims a Declaration that the land comprised in E.M.R. No. 75 is his property and that the Order of the Assistant Registrar dated the 30th March, 1931 should be set aside.

In my judgment the effect of the Order of the Court of Appeal dated the 9th August, 1932 was to make the order of the Assistant Registrar conclusive and the attachment good for all purposes subject only to the rights reserved by section 284 of the Civil Procedure Code.

Section 284 of the Civil Procedure Code reads as follows:—

> "The party against whom an Order under section 281, 282 or 283 is made may institute a Suit to establish the right which he claims to the property in dispute but subject to the result of such suit, if any, the order shall be conclusive."

I am satisfied on my own reading of this section and on the authority of *Ganesh* v. *Lashi*, Indian Law Reports 1904 Vol. 26 Allahabad Series, page 89, that the right reserved by this section is not a personal one and that the present plaintiff has the right to bring this action, notwithstanding the objection proceedings in Civil Suit No. 76 of 1930.

As to the question of the service of the order of the 11th October, 1930, evidence in respect of this has been given by Tan Bak Chay and by Lim Peng Hiang, one of his employees, and by agreement the Record in the objection proceedings has been put in.

According to the evidence of the process server he went to Benut on the 12th October, 1930 and served Abdulrahman in his house there.

According to the evidence of Manickam Socklingam's clerk, he was present on the 12th October, 1930, when the attachment order was served.

It is to be noticed that neither the process server nor the clerk states the hour of the day on which the Order was served on Abdulrahman.

I accept the evidence of Tan Bak Chay that on the 12th October, 1930 he left Benut between 8 and 9 o'clock together with Abdulrahman and that they went together to the office of Messrs. Shelley-Thompson and Demuth.

I find that if the attachment order was served on the land on the 12th October, 1930 Tan Bak Chay had no notice of it and that if the order was served on Abdulrahman in Benut on this day it was served on him after he had returned from Batu Pahat, and probably posted on the land about the same time if it was in fact so posted.

I have, however, had the endorsement made by the process server translated by the Court official. It reads as follows:—

> "Served on Abdulrahman bin Suleiman on 12th October, 1930 at Benut at 3-30 p.m. in his house."

As to the defence of *res judicata*, paragraph 3 of the Defence, as I understand the law, in order that such a defence may succeed it is necessary to show not only that the cause of action is the same but that the Plaintiff in the former proceedings had an opportunity of recovery.

In my judgment the proceedings in Civil Suit No. 92 between Tan Bak Chay—plaintiff—and the present defendant do not operate so as to bar the present plaintiff's right of action. Reference to the Record in these proceedings shows that the plaintiff in that suit could not have succeeded as he had no right of action vested in him when he took the proceedings or when the case came on for trial.

Next it is argued that the defendant having got his order for attachment registered in the Land Office, Batu Pahat, before the completion of the registration of the Transfer of the 12th October, 1930, that is the end of the matter; that the real question is one of priority of registration and Mr. Knowles refers to sections 42 and 59 of the Land Enactment and to the Transfer to Tan Bak Chay which is expressed to be registered subject to the attachment in Civil Suit No. 76 of 1930.

The material part of section 265 of the Civil Procedure Code reads as follows:—

> "265. (1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses, or other buildings, goods, money bank-notes, cheques, bills of exchange, promissory notes, Government securities, bonds or other securities for money, debt, shares in a corporation, and, except as hereinafter mentioned, all other saleable property, moveable or immoveable, belonging to the judgment-debtor or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, and whether the same be held in the name of the judgment debtor or by another person in trust for him or on his behalf."

The material words are "belonging to the judgment debtor *or over which or the profits of which he has a disposing power which he may exercise for his own* benefit."

By the order of the Assistant Registrar made in Civil Suit No. 76 of 1930 on the 11th October, 1930, it is all the right, title and interest, if any, belonging to the defendant, Abdulrahman, that is prohibited.

It is to be noticed that the concluding words of the first part of section 265 of the Civil Procedure Code commencing after the word "benefit" are "and whether the same be held in the name of the Judgment debtor or by another person in trust for him or on his behalf." The section in my opinion actually contemplates a seizure of land not registered in the judgment debtor's name.

In my judgment the provisions of the Land Enactments do not preclude the Court from going behind the registered title to enable the Court to enforce trusts or to grant relief on equitable grounds or in the present case to ascertain what interest the judgment debtor has in the land attached.

I do not attach much importance to the argument that as the date of the transfer to the plaintiff from Tan Bak Chay corresponds to the date of the Notice of Appeal from the Judgment of Thorne, J., which set aside the attachment, as this would be giving Tan Bak Chay credit for too much intelligence and would, in fact, be holding that he knew or thought the order of Thorne, J., was made without jurisdiction and that accordingly he was trying to dispose of the property while Mr. Justice Thorne's order stood and before the appeal came on.

As to the question of notice raised by Mr. Knowles, all the parties are fixed with is notice of the objection proceedings which I have already held are no bar to these proceedings.

My view is that Tan Bak Chay was entitled to sell the property if he could get a purchaser who would only get such title thereto as he then had, so that if Tan Bak Chay's right to bring this action was not in existence the purchaser could acquire no better right.

I hold that Tan Bak Chay was a *bona fide* purchaser. It is clear that his money must have been used to pay off the charge to the Chitty and I accept the evidence of Messrs. Shelley-Thompson and Demuth's clerk that he saw the purchase money paid.

I further find on the evidence of Tan Bak Chay and Messrs. Shelley-Thompson and Demuth's clerk that when the balance of the purchase price was paid over in the Land Office, Tan Bak Chay had no notice of the defendant's attachment.

In my judgment, therefore, on the 12th October 1930 Abdulrahman had divested himself of any disposing power in the land which he could have exercised for his own benefit. That accordingly as Abdulrahman had divested himself of any disposing power in the land, nothing was left for the defendant to attach when the order was served on the 12th October 1930 or on the 15th October 1930 when he presented the Order of attachment for registration.

It, therefore, follows that the plaintiff is entitled to the declaration asked for in the Amended Plaint.

Judgment accordingly.

Solicitors for Plaintiff—*Shelley-Thompson and Demuth.*

Solicitor for Defendant—*M. V. Pillai.*

STRAITS SETTLEMENTS.

[PRIVY COUNCIL]

LORD BLANESBURGH, LORD RUSSELL OF KILLOWEN, SIR LANCELOT SANDERSON.

July 13, 1933.

THE BATU PAHAT BANK, LTD.... Appellants

vs.

THE OFFICIAL ASSIGNEE OF THE PROPERTY OF TAN KENG TIN, A BANKRUPT } Respondent

[SINGAPORE BANKRUPTCIES Nos. 285 of 1929 and 347 of 1930 CONSOLIDATED. SINGAPORE CIVIL APPEAL No. 9 of 1932. PRIVY COUNCIL APPEAL No. 91 of 1932]

Ordinance No. 155 (Companies) Section 111 (3)—Banking Company's lien over its own shares.

Section 111 (3) of Ordinance No. 155 (Companies) provides that no banking company shall lend any part of its funds on the security of its own shares. A shareholder of the Appellants, the Batu Pahat Bank, Limited, holding fully paid up shares had obtained in 1921 an advance from the Bank of about $10,000.

By article 29 of its original Articles of Association the Bank was given a lien on all the shares (not fully paid up) registered in the name of each member for all the member's obligations to the Bank. After the enactment in the year 1923 of Section 111 (3) of Ordinance No. 155 (Companies) the Bank by Special Resolution amended its Article 29 so as to give itself a lien over its fully paid up shares also by deletion of the words "not fully paid up." The shareholder having been adjudged bankrupt, the Official Assignee claimed the shares to be "part of his property." The Bank claimed a lien.

Held on appeal to the Privy Council (a) That Section 111 of Ordinance No. 155 does not invalidate a security given in contravention of sub-section (3) thereof (b) That the Bank's Article of Association No. 29 as amended was not *ultra vires* (c) That continuing an existing loan to a customer of money previously lent was not a loan of the company's funds within the meaning of Section 111 (3) of the Ordinance and (d) That the Bank had a valid lien on the shares.

Allen v. *Gold Reefs of West Africa*, (1900) 1 Ch. 656 followed.

The decision of Terrell, J., and that of the Court of Appeal reported in 1 Mal. L.J. 134 reversed.

The finding of the dissenting Judge in the Court of Appeal, Whitley, J., upheld.

An appeal to the Privy Council from the decision of the Court of Appeal, Straits Settlements, which is reported in 1 Mal. L.J. 134.

Sir Gerald Hurst, K.C. (*C. D. Ryles* with him) for the Appellants.

St. John Micklethwait, K.C. (*A. W. Cockburn* with him) for the Respondent.

Cur. Ad.. Vult.

The judgment of their Lordships of the Privy Council (Lord Blanesburgh, Lord Russell of Killowen, and Sir Lancelot Sanderson) was delivered by—

LORD RUSSELL OF KILLOWEN.—The question for decision on this appeal is whether the appellants (who are a banking company limited by shares) are entitled to a lien on 110 fully paid shares in that company registered in the name of one Tan Keng Tin.

The company was registered in Singapore on the 20th August, 1919, under the Companies Ordinance, 1915, of the Straits Settlements. Tan Keng Tin was one of the original shareholders, having subscribed and paid in cash for 110 fully paid shares of $100 each.

The articles of association of the company contained the following provisions:—

> "5. No part of the funds of the company shall be employed by the directors or the company in the purchase of or lent on the company's shares.
>
> "29. The company shall have a first and paramount lien upon all the shares (not fully paid up) registered in the name of each member (whether solely or jointly with others) for all calls upon such shares and also for all debts, obligations, engagements and liabilities of such member solely or jointly with any other person to or with the company whether the period for the payment, fulfilment or discharge thereof shall have actually arrived or not.
>
> "30. For the purpose of enforcing such lien the directors may sell the shares subject thereto to any number but no sale shall be made until the time for such payment, fulfilment or discharge as aforesaid shall have arrived, and notice in writing of the intention to sell shall have been served on such member holding the shares or his representatives and default shall have been made by him or them in payment, fulfilment or discharge of such debt, liabilities or engagements within fourteen days after such notice."

In 1921 Tan Keng Tin, who was a customer of the bank obtained a loan from the company of $10,000. The evidence as regards this transaction, and indeed, as regards the whole case, is meagre. The transaction is referred to as the obtaining of an overdraft for $10,000, which was reduced later to $9,000. At the inception of the loan Tan Keng Tin signed some document, of which there are no particulars. At a later date (viz., December, 1928) at the request of the bank, who represented that the original document "was affected by effluxion of time," he signed a promissory note for $9,000, being apparently the amount then due. This document was, for some unexplained reason, signed by him both in his own name and in the name of a business firm of which he was the sole member, and which had ceased to carry on business. From these facts it would appear that the transaction was an immediate advance in 1921 by the bank of $10,000 on loan account (subsequently paid off to the extent of $1,000), and not an overdraft in the ordinary sense of a current account overdrawn to varying amounts from day to day.

In the year 1923 the law relating to banking companies and certain other companies was amended by inserting a new provision into section 111 of the Ordinance No. 155 (Companies) (formerly section 108), and by altering the wording in other respects.

The amended section runs thus, the new provision being sub-section three:—

Banking and certain other companies.

"111.—(1) No loan shall be made by any banking or insurance company or by any deposit, provident or benefit society to any director or officer of such company or society or to any firm of which any director or officer of such company or society is a partner, except upon securities in which a trustee may invest under the powers of Ordinance No. 144 (Trustees) and the value of which exceeds the amount lent by 30 per centum.

"(2) A list containing the amounts lent every month under sub-section (1) and the names of the directors or officers to whom such loans have been made together with the amounts previously lent which have not been repaid shall be prepared, and a copy thereof shall on or before the first Monday in every succeeding month be sent to the Registrar.

"(3) No such company as aforesaid shall lend any part of its funds upon the security of its shares.

"(4) If any loan is made in contravention of this section, any director or manager of the Company or society shall be liable to a fine not exceeding $1,000, and shall also be liable for the payment of any portion of the amount lent which remains unpaid after deducting the amount realized on the securities.

"(5) If default is made in complying with sub-section (2) any director or manager of the company or society shall be liable to a fine not exceeding $50 for every day during which the default continues.

"(6) For the purpose of this ordinance a company which carries on the business of insurance in common with any other business or businesses shall be deemed to be an insurance company."

In the year 1927 the 29th article of association of the bank was amended by striking out the words in brackets, viz., "not fully paid up."

On the 4th October, 1929, Tan Keng Tin was adjudicated bankrupt. A dispute then arose between the bank and the official assignee, the former claiming a lien on the shares, the latter disputing the claim, with the result that the official assignee took out a summons in the bankruptcy by which he claimed that the 110 shares were "part of the property of the bankrupt." The true question for decision, however, was, and was correctly stated in the evidence to be, "has the bank a valid lien on these shares?"

On the hearing of the summons Terrell, J., made an order declaring that the bank had no valid lien on the shares. On appeal the Court of Appeal of the Supreme Court of the Straits Settlements dismissed the appeal (Whitley, J., dissenting).

Terrell, J., held that no money had been advanced to Tan Keng Tin on the security of his shares, but that the effect of section 111 (3) of the ordinance was to invalidate any security for a loan by the company purported to be created on the company's shares and to render article 29 of the bank's articles of association *pro tanto ultra vires*; with the result that no lien attached.

On the appeal Murison, C.J., and Burton, J., seem to have agreed in substance with this view. On the other hand Whitley, J., was of opinion that section 111 did not invalidate a security given in contravention of section 111 (3), and that accordingly article 29 was not *ultra vires*.

Their Lordships agree with the conclusion of Whitley, J., and are of opinion that the bank have a valid lien on the shares.

In 1921 the bank lent $10,000 of its funds to Tan Keng Tin. This money was not lent upon his shares, because (even assuming that a lien attaching under article 29 at the moment of a loan by the company, would make that loan a loan on the company's shares within the meaning of article 5), no lien did attach at the moment of this loan because the shares were fully paid shares.

The alteration of the articles in the year 1927 would (apart from the effect of section 111 (3) of the Companies Ordinance) operate to create an effective lien on the shares in favour of the bank (*Allen* v. *Gold Reefs*, [1900] 1 Ch. 656). There is nothing in article 5 to prevent this, for the funds had already been lent in 1921; and their Lordships are unable to find any grounds upon which it can be said that there was any loan of the company's funds to Tan Keng Tin on any later date.

The question then arises whether section 111 (3) of the Companies Ordinance operates to invalidate the security or whether it merely prohibits the making of a loan on security under pain of incurring the specified penalties and liabilities. The answer to this question, which is the crucial question in the case, depends upon the true construction of the language used in the section, and this, in their Lordships' opinion, is, by sub-section 4, made reasonably clear. Sub-section 4 deals in terms with the case of "any loan.....made in contravention of this section." It was argued that this sub-section only refers to a loan made in contravention of sub-section 1; and that the words "the securities" refer only to the securities for a loan within sub-section 1. Their Lordships cannot so hold, without giving to the words used a meaning which they simply do not bear. Sub-section 5 shows that the legislative power when it desired to do so, did in terms refer to the infringement of a particular sub-section. Their Lordships can do no other than say that sub-section 4 means what it says, and that it deals with *any* loan made in contravention of the *section*, including, therefore, a loan by a

banking company of part of its funds upon the security of its shares. If that event happens sub-section 4 specifies the consequences, and they include a personal liability on directors and managers for "the payment of any portion of the amount lent which remains unpaid after deducting the amount realized on the securities." This is a recognition by the sub-section of two things, viz. (1) the continuance of the security on which the loan was made and (2) the discharge of the debt *pro tanto* by the proceeds of its realization. In the face of this it seems to their Lordships impossible to say that section 111 (3) operates to invalidate a lien which would, apart from that sub-section, be an effective lien.

For these reasons their Lordships are of opinion that the appeal should succeed, that the orders of Terrell, J., and of the Court of Appeal should be set aside, and an order made declaring that the bank have a valid lien on the 110 fully paid shares for the principal and interest due to them in respect of the loan. The appellants must have their costs here and below, which in the event of any insufficiency of the bankrupt's estate can be added to their security. Their Lordships will humbly advise His Majesty accordingly.

Appeal allowed.

Solicitors for the Appellants—*Peacock and Goddard*, London; *Braddell Brothers*, Singapore.

Solicitors for the Respondent—*Baileys, Shaw and Gillett*, London.

[ORIGINAL CIVIL JURISDICTION]

[APPELLATE JURISDICTION]

MILLS, J.

March 2, 1933.

TERRELL, COBBETT and WILLIAMSON, JJ.

June 23, 1933.

MUTTIAH.....Plaintiff (Appellant)

vs.

CHANG KIAM HO.....Defendant (Respondent)

[SINGAPORE SUIT No. 338 of 1932]

[*IN FORMA PAUPERIS* APPEAL No. 7 of 1933]

Foreign Judgment, action on—F.M.S. Labour Code, 1923 — Order of Deputy Controller of Labour.

An order of the Deputy Controller of Labour, Ipoh, under S. 98 of the F.M.S. Labour Code, 1923, is not a final and conclusive order productive of a *res judicata* between the parties thereto and therefore cannot be sued on in the Courts of the Colony as on a foreign judgment.

Action.

On the 28th February, 1930, the Deputy Controller of Labour at Ipoh made an order under S. 98 of the F.M.S. Labour Code, 1923, ordering the Defendant to pay to the Plaintiff the sum of $867.20.

The Plaintiff sued the Defendant on that order by specially endorsed writ. The Defendant filed a Defence denying all indebtedness, denying the order, and averring that if such order was made (which was denied) it was not enforceable against the Defendant. He also set up other pleas in defence.

Menon for the Plaintiff.

Mallal for the Defendant.

MILLS, J.—The Plaintiff in this case sues on an order made on the 28th of February, 1930, by the Deputy Controller of Labour at Ipoh, ordering the defendant to pay the sum of $867.20 to the Plaintiff.

Halsbury (2nd Edition, Vol. 6, p. 324) states the law as follows:—"The judgment *in personam* of a foreign Court of competent jurisdiction condemning one of the parties to the payment of a sum of money constitutes a good cause of action in England;" the judgment is regarded as creating a debt between the parties to it, the liability of the defendant arising on an implied contract to pay the amount stated to be due.

The defendant admitted that the order had been made as alleged by the plaintiff, but he raised four defences to the action.

First, he contended that the order was not a final and conclusive judgment of a foreign Court.

I hold that the tribunal constituted by the Controller of Labour is not a Court: first, it is not designated or described as a Court in the Enactment which establishes it: secondly, it is not a Court for all purposes; for instance, the Federated Malay States Court of Appeal has held that it is not a Court within the meaning of the Civil Procedure Code (*Chhin Sin Choy* v. *Chin Kee and others*, F.M.S. Law Reports Vol. IV, p. 3): thirdly, it lacks certain of the qualities which ordinarily characterize a Court; for instance its procedure differs materially from the procedure prescribed for a Court under the Procedure Code; again, the Controller has no power to administer an oath; again the Controller holds his enquiries in private.

Further I hold that the Controller's decision is not a final and conclusive judgment; this is clear from Section 217 of the Labour Code which enacts that an employer or labourer may enforce his civil rights and remedies by a suit in Court, in any case in which proceedings are not proceeded with to judgment and satisfaction under the Labour Code.

Secondly, the defendant contended that the proceedings before the Controller were irregular because no complaint was made to the Controller by the Tamil labourers. I hold against that contention for three reasons: first, the English